

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Pacific Gas and Electric Company (U 39 E) and Pacific Generation LLC for Approval to Transfer Certain Generation Assets, for a Certificate of Public Convenience and Necessity, for Authorization to File Tariffs and to Issue Debt, and for Related Determinations.

Application No. 22-09-018

**STATEMENT OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
AND PACIFIC GENERATION LLC REGARDING DECISIONS
POTENTIALLY MODIFIED BY A DECISION IN THIS PROCEEDING**

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I. INTRODUCTION

Pursuant to the instruction and authorization of Assigned Administrative Law Judge Sophia Park and Rule 13.12 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC or the Commission), Pacific Gas and Electric Company (PG&E) and Pacific Generation LLC (Pacific Generation and, together with PG&E, the Applicants) submit this Statement in response to ALJ Park’s inquiry at the December 2, 2022 prehearing conference regarding the Commission decisions the Applicants request be modified by a Commission decision on the above-captioned application (the Application).¹ PG&E and Pacific

¹ The Commission has previously recognized that prior decisions may be modified or overruled through other proceedings, as well as by a petition for modification. *See* D.12-01-032 at 30 (rejecting a revision to General Order 165 regarding future requests for exemptions or modifications as “unnecessary because the Commission already has procedures to request an exemption or modification, including applications, petitions for modification of Commission decisions, and petitions for new rulemaking proceedings”); Resolution E-5028 at 14 (Sep. 26, 2019) (interpreting D.15-05-051 to conclude that utilities could file a Tier 3 advice letter for proposed changes to the GTSR program if such changes “do not result in a different structure or materially different capacity” and that if such changes do, “the change should be pursued via an application”); D.07-09-041 at 23-24 (“to the extent certain Commission decisions are inconsistent with our approach, we overrule them”). The Applicants are also serving this filing on the service list for A.21-03-008 (in which D.22-04-041 was issued), A.18-12-009 (in which D.20-12-005 was issued), I.02-04-026 (in which D.03-12-035 was issued), and A.95-10-024 (in which D.99-04-068 was issued).

Generation identify below the decisions subject to potential modification herein of which they are currently aware.²

II. DECISIONS EXTENDED TO PACIFIC GENERATION THAT WILL CONTINUE TO APPLY TO PG&E

As an initial matter, PG&E has not itemized in this Statement various Commission decisions currently applicable to PG&E that also would apply to Pacific Generation upon the granting of this Application, and that would continue to apply to PG&E in the same manner as they do today. For instance, PG&E is subject to a wide number of Commission decisions relevant to its operation as a public utility regulated by the Commission. To the extent such decisions would continue to apply to PG&E to the same extent as currently, they would not be “modified” by any Commission decision in this proceeding. Rather, the Commission’s decision in this proceeding would have the effect of extending any such obligations to Pacific Generation as well.³ For example, various decisions outlining the structure of the Power Charge Indifference Adjustment (PCIA) currently specify the three major investor-owned utilities. This existing structure and methodology would be applied to Pacific Generation through a new decision rather than a modification.

III. DECISIONS SUBJECT TO POTENTIAL MODIFICATION

PG&E and Pacific Generation have identified the following decisions that would be modified if the Commission grants the relief sought in the Application:

- The Applicants request modification to the language of the First Priority Condition at Ordering Paragraph (“OP”) 8 of D.99-04-068⁴ to state: “The capital

² PG&E and Pacific Generation reserve the right to file and serve updates to this Statement from time to time, to the extent that they become aware of additional decisions that may be modified by a Commission decision in this proceeding.

³ See, e.g., D.16-12-057 at 17, 25 (“Today’s decision interprets and applies various prior Commission decisions to the present circumstances and does not modify the language or result of any past decision except to the extent that it modifies D.15-09-018 pursuant to the decision granting its partial rehearing (D.16-02-008).”).

⁴ OP 8 of D.99-04-068 was a modification of OP 17 of D.96-011-017.

requirements of PG&E and Pacific Generation, as determined to be necessary and prudent to meet the obligation to serve or to operate the utility in a prudent and efficient manner, shall be given first priority by PG&E Corporation's Board of Directors.”⁵ Such a modification reflects Pacific Generation's status as a regulated subsidiary. This proposed modification is identified at page 38 of the Application.

- PG&E requests a modification of D.22-04-041, the decision that resolved Phase One of PG&E's 2020 Energy Resource Recovery Account (ERRA) compliance application and approved a settlement agreement resolving contested issues in Phase One. This proposed modification is identified at page 11-6 of Chapter 11 of the Testimony. The settlement agreement that D.22-04-041 approves contains a provision that requires PG&E to provide a corrective actions progress report, in connection with the Pit 5, Unit 2 hydroelectric forced outage, in future ERRA compliance filings. PG&E requests modification to OP 1 of D.22-04-021 to include language stating: “PG&E's obligations to file a corrective actions progress report (associated with the Pit 5, Unit 2 hydroelectric plant outage) in future ERRA compliance filings is terminated and such obligations are transferred to Pacific Generation.”
- PG&E requests modification of its obligations under OP 1 of the Commission's decision in PG&E's 2020 General Rate Case (GRC) (D.20-12-005). Specifically, Section 2.4.4 of the approved Settlement Agreement requires PG&E to perform certain requirements in connection with ISO 55000 certification for its dams and other hydroelectric assets. Because these assets will be transferred to Pacific Generation, the Applicants propose that the requirements transfer with the assets, such that Pacific Generation, and not PG&E, will be responsible for taking these

⁵ PG&E makes this same modification request in the Application at 38 and 55, ¶ 9.

actions in relation to the assets at issue. This is discussed on page 11-6 of Chapter 11 of the Testimony. PG&E requests modification to OP 1 of D.20-12-005 to include the language: “PG&E’s obligations regarding ISO 55000 certification under Section 2.4.4 of the Settlement Agreement are terminated and such obligations are transferred to Pacific Generation.”

- PG&E also may request a modification of D.03-12-035, the decision approving the settlement agreement between PG&E and Commission staff in connection with PG&E’s first bankruptcy proceeding. The settlement includes the Land Conservation Commitment, pursuant to which PG&E agreed to donate conservation easements, or lands in fee, in respect of certain Watershed Lands and Carizzo Plains. As noted in Chapter 11 of the testimony,⁶ PG&E expects to complete those donation transactions prior to the closing of the Proposed Transaction. If, however, certain donations have not been completed, PG&E will transfer the lands in question to Pacific Generation, which will then assume PG&E’s obligations under the Land Conservation Commitment. In that scenario, PG&E requests modification to OP 6 of D.03-12-035 to include language stating: “PG&E’s obligations to carry out the donations pursuant to the Land Conservation Commitment are terminated and such obligations are transferred to Pacific Generation.”

PG&E notes that there are a number of decisions that impose obligations on PG&E which the Application proposes will be jointly fulfilled by PG&E and Pacific Generation following the Proposed Transaction or, in some instances, will remain in part with PG&E but also transfer to Pacific Generation. For example, these decisions include the following:

⁶ Testimony (Chapter 11) at 11-8.

- D.22-01-023 requires PG&E to file an Annual Electric True-Up advice letter. The Application proposes that PG&E and Pacific Generation will jointly file such advice letters (and jointly comply with other related compliance obligations).
- D.20-08-004 requires PG&E to process customers' PCIA prepayments. The Application proposes that PG&E and Pacific Generation will jointly process such prepayments and shall flow such prepayments to both Pacific Generation and PG&E's PCIA Prepayment Balancing Accounts.
- D.22-01-023 modified the ERRA trigger mechanism to consider ERRA account balances net of Portfolio Allocation Balancing Account (PABA) balances. Under the ratemaking proposed in the Application, PG&E would consider Pacific Generation and PG&E's aggregate revenue requirement, ERRA balance and PABA balance in 1) determining whether the ERRA trigger and/or threshold have been reached, and 2) projecting whether the aggregate balance will self-correct below the trigger and/or threshold. Such an approach would functionally preserve the pre-transaction status quo in terms of when and how the trigger would apply.
- There are a number of prior decisions related to the statutory and regulatory requirements for load-serving entities, including Resource Adequacy, Renewables Portfolio Standard, and Integrated Resource Planning. As explained on pages 39 and 61 of the Application and 11-2 to 11-4 of Chapter 11 of the Testimony, PG&E and Pacific Generation propose to jointly achieve compliance with certain of these requirements,⁷ including by consideration of the combined portfolio of resources serving the customers of PG&E and Pacific Generation, including Pacific Generation's assets, which PG&E will manage as operator.

⁷ Unlike the load-serving entity obligations for which compliance will be jointly achieved, the Applicants propose that PG&E would remain designated the provider of last resort and the Central Procurement Entity. *See* Testimony (Chapter 11) at 11-3.

Because the substance of the obligations established in the prior decisions will continue in effect, and the same assets and personnel will be used to comply with those obligations (as described in Chapter 11 of the Testimony), PG&E and Pacific Generation understand the requested relief to involve an interpretation of those decisions by the Commission, rather than any modification. The Applicants nevertheless identify these examples herein in the interests of transparency and out of an abundance of caution.

IV. PENDING AND FUTURE PROCEEDINGS THAT MAY RESULT IN DECISIONS THAT COULD BE AFFECTED BY THE OUTCOME OF THIS PROCEEDING

As further context, PG&E identifies certain pending and anticipated future proceedings that may result in decisions that could be affected by the outcome of this proceeding. PG&E will endeavor to inform the Commission in those proceedings of the potential relationship to this Application so that the outcomes can be coordinated and modifications of such decisions may not be necessary.

- The Application and Testimony discuss extensively the relationship between the issues before the Commission in PG&E's Test Year 2023 GRC (A.21-06-021) and this Application.⁸ In light of the fact that a decision in this proceeding establishing Pacific Generation's revenue requirement would entail transitioning the revenue requirement associated with PG&E's non-nuclear generation (adjusted to exclude procurement) from PG&E to Pacific Generation, such a decision could be viewed as a modification to the Commission's ultimate decision in PG&E's 2023 GRC. Depending on the timing of the closing of the Proposed Transaction in relationship to the Commission's decision in A.21-06-021, PG&E's currently applicable GRC Decision for the period 2020 to 2022 (D.20-12-005) likewise could be impacted for a similar reason.⁹ The same is also true

⁸ See, e.g., Application at 30-33; Testimony (Chapter 9) at 9-2 to 9-9.

⁹ See Testimony (Chapters 9 and 10) at 9-3 (discussing the potential allocation methodology in this scenario) and 10-10.

for PG&E's currently pending 2023 ERRR application (A.22-05-029) depending on the timing of the closing of the Proposed Transaction. As explained in more detail in the Testimony, PG&E and Pacific Generation may jointly file the 2024 ERRR forecast application.¹⁰

- The Application requests that Pacific Generation inherit the Commission's decision on PG&E's 2023 Cost of Capital Application (A.22-04-008) regarding the cost of long-term debt, rate of return on equity, weighted and consolidated rate of return, and the requested Yield Spread Adjustment, all without change to how the decision applies to PG&E. Thus, PG&E and Pacific Generation do not anticipate that the Commission's decision in A.22-04-008 will be subject to potential modification by a decision in this proceeding but identify A.22-04-008 in the interests of transparency and out of an abundance of caution.
- PG&E applied, prior to the Application, for Section 851 approval to sell certain small hydroelectric plants, and accordingly does not propose to transfer them to Pacific Generation.¹¹ PG&E does not expect that a decision on this Application will affect those proceedings, in which the Commission has already issued decisions. If one of those sales does not close, PG&E will evaluate further how to address those projects.

V. REQUESTS FOR EXEMPTIONS OR WAIVERS

A. Affiliate Transaction Rules

The Applicants do not believe the relief sought would require the Commission to modify D.06-12-029, the decision applying the Commission's Affiliate Transaction Rules ("ATR") to electrical corporations with greater than \$1 billion of California gross annual operating revenues. As explained on page 37 of the Application, the Applicants' position is that Pacific Generation is

¹⁰ Testimony (Chapter 9) at 9-12 to 9-13.

¹¹ See D.22-11-002 (authorizing sale of Tule River Hydroelectric Project); D.19-10-011 (authorizing sale of Deer Creek Hydroelectric Project).

a regulated subsidiary, not an “affiliate” of PG&E subject to the ATR. In the alternative, however, the Applicants ask the Commission to exempt Pacific Generation from the “affiliate” definition or otherwise grant a waiver of the Affiliate Transaction Rules to the extent they apply to the relationship between PG&E and Pacific Generation.¹² The Commission granted such a waiver in the context of the Enova-Pacific Enterprises merger, and in so doing, did not invoke its power to modify the then-existing Affiliate Transaction Rules decision under Public Utilities Code section 1708.¹³ The Applicants do not believe the requested relief requires a modification of D.06-12-029, even if the Commission were to conclude that Pacific Generation is an affiliate of PG&E and granted an exemption or waiver, as no textual change to the language of D.06-12-029 is necessary.¹⁴ However, the Applicants identify that decision in the interests of transparency and out of an abundance of caution.

B. The Commission’s Decision on PG&E’s Plan of Reorganization (D.20-05-053)

With respect to D.20-05-053, the Commission’s decision approving PG&E’s Plan of Reorganization, the Applicants request an exemption for Pacific Generation from (i) the requirement to “provide quarterly reports to the Commission’s Energy Division of the sale or encumbrance of any assets of [PG&E’s] affiliates or subsidiaries” and (ii) prior Commission approval for “[a]ny sale or encumbrance of assets of affiliates or subsidiaries over which PG&E or PG&E Corporation has control and that has a value over \$5 million.”¹⁵ This issue is discussed on page 38 of the Application. PG&E and Pacific Generation’s position is that Pacific Generation is a regulated subsidiary; thus, any asset dispositions by Pacific Generation should be

¹² See D.98-03-073 at 106-07 (exempting SoCalGas and SDG&E from the utility-to-utility affiliate transaction rules).

¹³ See *id.*

¹⁴ See, e.g., D.22-09-016 (granting an exemption to the Affiliate Transaction Rules without modifying the underlying rules); D.12-05-010 (same); D.01-03-041 (same); D.00-07-047 (same); D.99-01-015 (same).

¹⁵ D.20-05-053 at 37; see Application at 38.

governed by Section 851. The Applicants also believe that such a request for an exemption can be granted without modifying the underlying decision.¹⁶

Respectfully Submitted,

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¹⁶ D. 22-08-004 at 92 (exempting the special purposes entities responsible for “issuing Recovery Bonds . . . from the new affiliate requirements established in D.20-05-053” without modifying the original decision); D.21-06-030 at 97 (same); D.21-05-015 at 75 (same).